IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WA.No. 974 of 2007()

AGAINST THE JUDGEMENT IN WPC.19162/2006 Dated 21/03/2007
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APPELLANT: 2ND RESPONDENT IN THE WPC

DISTRICT CO-OPERATIVE BANK, KANNUR,
REPRESENTED BY ITS GENERAL MANAGER IN-CHARGE.

BY ADV. SRI.O.V.RADHAKRISHNAN (SR. ADVOCATE)
SMT.K.RADHAMANI AMMA
SRI.ANTONY MUKKATH
SRI.JAMES KURIAN
SRI.K.V.JOY

RESPONDENTS: PETITIONER/RESPONDENTS 1 AND 3 IN THE WPC
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1. BABURAJ PANKAN, PANKAN HOUSE,
KADALAYI THERU, CHIRAKKAL P.O., KANNUR.

2. KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY THE SECRETARY, PATTOM,
THIRUVANANTHAPURAM.

3. ABDUL NAZAR.P., GENERAL MANAGER,
CALICUT CO-OPERATIVE URBAN BANK LTD.,
KALLAYI P.O., KOZHIKODE-2.

R2 BY ADV. SRI P.C. SASIDHARAN, STANDING COUNSEL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 27/06/2007, ALONG WITH WA NO. 982 OF 2007
WPC NO. 12442 OF 2007 WA NO. 1010 OF 2007
WA NO. 1013 OF 2007 THE COURT ON 27/06/2007
DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

Writ Appeal Nos. 974, 982, 1010 and 1013 of 2007
and W.P.C. No 12442 of 2007

Dated: 27th June, 2007

JUDGMENT

Radhakrishnan, J.

The Kerala Public Service Commission had published a notification dated 03.06.2004 which was published in the Kerala Gazette dated 15.06.2004 inviting applications for selection to the post of General Manager on district-wise basis in the scale of Rs 8150-16150 for the vacancies in the Thrissur District Co-operative Bank, the Kannur District Co-operative Bank, the Idukki District Co-operative Bank and the Wayanad District Co-operative Bank.

2. In this case we are concerned with the appointment in the Kannur District Co-operative Bank. Several persons applied in pursuance to the above mentioned notification. Public Service Commission conducted a written test and an interview and then published a ranked list for appointment to the post of General

Manager in the Kannur District Co-operative Bank. Second respondent in the writ petition, W.P.C. No 12442 of 2007, one Abdul Nazar was the only person included in the ranked list. Later Public Service Commission issued an advice memo dated 20.04.2006 to the Bank regarding the selection and appointment of Abdul Nazar which was challenged by Baburaj Pankan by filing W.P.C. No 19162 of 2006 contending that Abdul Nazar was not having the requisite qualification and experience as prescribed under Rule 186 (1) (1B) of the Kerala Co-operative Societies Rules, 1969. It was contended that Abdul Nazar was not functioning or discharging his duties in managerial or supervisory cadre for three years as on the date of the application. This court passed an interim order on 25.07.2006 directing the Bank not to issue appointment order till 02.08.2006 if the same has not been issued. The interim order continued till the disposal of the writ petition. Along with W.P.C. No 19162 of 2006, W.P.C. No 21762 of 2007 was also filed raising identical grounds.

3. The Public Service Commission took up the stand that Abdul Nazar possessed all the requisite qualification and experience in the managerial/supervisory cadre and on being found eligible, he was considered for appointment to the post of General Manager and

included in the ranked list. Further it was also pointed out that the certificates produced by him were duly examined by the Selection Committee and it was found that he had the requisite qualification and experience for appointment to the post of General Manager. The District Co-operative Bank supported the writ petitioner and submitted that Abdul Nazar did not have sufficient qualification and experience as per the notification issued by the Public Service Commission as well as under Rule 186 (1)(1B) of the Rules.

4. Learned single judge considered the rival contentions and found that Abdul Nazar had possessed the requisite qualifications and experience as per Rule 186 (1) (1B) of the Rules. It was also noticed that even though writ petitioner had participated in the written test conducted by the P.S.C he was found unsuitable and was not called for the interview. Further it was also noticed that the Public Service Commission, a permanent and autonomous body, had properly conducted the selection as per the Rules and there was no illegality or infirmity in the process of selection and issuance of advice memo. Holding so, both the writ petitions were dismissed.

5. Aggrieved by the same District Co-operative Bank, Kannur

has filed W.A. No 974 of 2007 against the judgment in W.P.C. No 19162 of 2006 and W.A. No 982 of 2007 against the judgment in W.P.C. No 21762 of 2006 and has also filed W.P.C. No 12442 of 2007. Writ petitioner in W.P.C. No 19162 of 2006 has filed W.A. No 1010 of 2007 and the writ petitioners in W.P.C. No 21762 of 2006 have filed W.A. No 1013 of 2007.

6. Senior Counsel Sri O.V. Radhakrishnan, appearing for the Bank, submitted that the learned single judge was not justified in holding that Abdul Nazar possessed the requisite qualification and experience prescribed under the notification as well as Rule 186 (1) (1B) of the Co-operative Societies Rules. Counsel submitted that the experience gained by Abdul Nazar from ICDP, which is a time bound project, cannot be equated with experience in managerial/supervisory cadre and it cannot be said that he was working in managerial/supervisory cadre in co-operative institutions while working in Project Implementation Team. Counsel referred to the various certificates produced and submitted that the qualification and experience are not the qualification and experience prescribed under Rule 186 (1)(1B) of the Rules. Counsel submitted that ICDP is under the Central Sector Scheme for providing financial assistance

for infrastructural development of co-operatives by way of loans and government share capitals, which is a time bound project sanctioned for the period upto 31.03.2004 and that Abdul Nazar was deputed to work as Manager (Credit) in the Project Implementation Team. Counsel submitted that the experience gained by Abdul Nazar cannot be equated with the experience in managerial/supervisory cadre in co-operative institutions. Counsel also referred to the Kerala Public Service Commission (Consultation by Committee of Co-operative Societies) Rules, 1998 and submitted that as per Rule 3 appointing authority is not bound to accept the advice given by the Public Service Commission if there are sufficient reasons for the same. It is also stated that even though the Executive Committee met they could not refer the matter to the Government for taking a decision as per the procedure contemplated under Rule 3 since the matter was seized before this court. Counsel referred to the decision of the apex court in Dr H. Mukherjee v. Union of India and others (1994 Supp. (1) SCC 250) and submitted that in appropriate cases appointing authority may disapprove the advice given by the Public Service Commission. Reference was also made to the decision of the apex court in S.S. Dhanoa v. Municipal Corporation,

Delhi (AIR 1981 S.C. 1395) and submitted that the experience gained by an officer on deputation cannot be counted as experience in the parent department.

7. Sri George Poonthottam, counsel appearing for the appellants in W.A. Nos 1010 and 1013 of 2007 supported the arguments of the Senior Counsel appearing for the Bank and submitted that the third respondent, Abdul Nazar, was not qualified to apply for the post and that the petitioner in W.P.C. No 19162 of 2006 was the only qualified person and he should have been included in the ranked list. Counsel also made reference to the judgment of this court in Rajasekharan Nair v. DIG of Police (1987 (2) KLT 993) and also the judgment in W.A. No 15 of 1977 in support of his contentions.

8. Sri P.C. Sasidharan, counsel for the Public Service Commission submitted that there is no reason to discard the advice given by the Public Service Commission. Counsel submitted that Abdul Nazar has satisfied the qualification as well as the experience prescribed for the post and the Selection Committee rightly found so. Further it was also stated that Abdul Nazar has satisfied the qualifications laid down in the notification issued by the Public

Service Commission in accordance with Rule 186 (1)(1B) of the Rules. Counsel also referred to the Kerala Public Service Commission (Additional Functions as Respects Certain Societies) Act, 1996 and submitted that under Section 3 a duty is cast on the P.S.C to prepare select list for appointment by direct recruitment, of officers and servants of the services in a society and in the case of any difference of opinion between the Public Service Commission and a committee on any matter, the committee shall refer the matter to the Government. Counsel submitted that President of the Society was also a member of the Selection Committee and no member of the Selection Committee raised any doubt about the qualification of Abdul Nazar and no request was made by the Committee of the Bank to refer the matter to the Government. In such circumstances counsel submitted that there is no bonafide in the stand of the Society in not acting upon the advice given by the Public Service Commission for the appointment of Abdul Nazar as General Manager.

9. The Kerala Public Service Commission (Additional Functions as Respects Certain Societies) Act, 1996 is intended to provide for the exercise of certain additional functions by the P.S.C

as respects the services under certain societies. Section 3 of the Act states that it shall be the duty of the Public Service Commission to prepare select list for appointment by direct recruitment of officers and servants of the services under a society. Sub-section (2) of Section 3 authorises a committee, as the governing body of the society, to consult the P.S.C as respects the matters relating to direct recruitment to the services and posts under the society and on the principles to be followed in making appointments by direct recruitment to the services and posts under the society and on the suitability of candidates for such appointments, and it shall be the duty of the P.S.C to advise on any matter referred to them. Sub-section (4) of Section 3 states that in the case of any difference of opinion between the Public Service Commission and a committee on any matter, the committee shall refer the matter to the Government and the decision of the Government thereon shall be final.

10. Government in exercise of the powers conferred in sub-section (4) and the proviso to sub-section (2) of Section 3 of Act 5 of 1996 framed the Kerala Public Service Commission (Consultation by Committee of Co-operative Societies) Rules,1998. Rule 3 provides the procedure to be followed by the Committee of Societies. Clause

(d) of Rule 3 says that where it is proposed not to accept the advice of the Commission for reasons not before the Commission, at the time of making the advice, the Commission shall be consulted again. Clause (e) of Rule 3 says that where it is proposed to reject to deviate from the advice tendered by the Commission, the matter shall be placed before the next meeting of the Committee for orders and after intimating the same to the Commission, the committee shall refer the matter to the Government and the decision of the Government therein shall be final. If the Committee of the Society, in our view, has got any doubt about the qualification of Abdul Nazar it should have consulted the Public Service Commission as per Section 3. The Committee of the Society, at no point of time had raised any dispute with regard to the qualification of Abdul Nazar and had never addressed the Public Service Commission because there was no difference of opinion between the Public Service Commission and the Committee so as to refer the dispute to the Government for its decision.

11. Public Service Commission forwarded the advice to the society by its letter dated 20.04.2006. The Committee of the Society at no point of time raised any dispute with regard to the qualification

of Abdul Nazar before the Public Service Commission. It is specifically stated in the advice memo that orders of appointment should be issued to the candidate as early as possible and in no case it should exceed the maximum period of three months from the date of advice; failing which the matter should be reported to the office of the Public Service Commission with reasons for the delay. The Committee of the Society had never raised any complaint when it received the advice memo. Only the person who was not included in the rank list has approached this court challenging the advice memo issued to Abdul Nazar.

12. Appointment in the Society is governed by Act 5 of 1996 and the Rules framed thereunder and the question of invoking Article 323 of the Constitution does not arise since Public Service Commission is consulted by the Committee of the Society in terms of the provisions contained in Act 5 of 1996 and the Rules framed thereunder. For this reason the decision in Dr H. Mukherjee's case, is inapplicable to the facts of this case. Since the Committee of the Society has not invoked the provisions of the Act at any point of time, the Committee cannot be heard to contend that the candidate included in the ranked list does not possess the requisite qualification

as per the notification as well as under Rule 186 (1)(1B) of the Rules. Further we also notice that President of the Co-operative Society was also a member of the Committee which conducted the interview. Rule 6 of the Kerala Public Service Commission Rules of Procedure says that where the oral test (interview) is conducted by the commission the Commission shall invite the appointing authority and/or the Head of the Department concerned to be present or to appoint a representative to be present and the appointing authority and/or Head of Department or his representative so present may take part in the deliberations of the Commission but shall not be entitled to award marks. Rule 7 says that the deliberations of the Commission at the interview of candidates including award of marks to the candidates shall be kept secret and this rule shall be binding on the Heads of Departments or their representatives or other experts who are present at the interview. President of the Society was present at the time of interview representing the society and he had not raised any doubt with regard to the qualification of the candidate. So far as the writ petitioner is concerned he was not included in the ranked list since he was found unfit and hence he cannot challenge the ranked list published by the Public Service

Commission.

13. In the above mentioned circumstances, we find no reason to interfere with the judgment of the learned single judge. Writ appeals and the writ petition would stand dismissed.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

27/07/2007
en/

WPC 12442 of 2007

Appendix

Petitioner's exhibits:
Ext.P1 - Photocopy of Notification R&A II (3)34520/2004/GV dated 03.06.2004 published in theKerala Gazette Extra Ordinary dated 15.06.2004
Ext.P2 - Photocopy of the ranked list No 50/2006/SS III dated Nil of the first respondent
Ext.P3 - Photocopy of the advice memo No CV(3)2134/04 dated 20.04.2006 of the first respondent.
Ext.P4 - Photocopy of interim order dated 25.07.2006 in WPC 19162 of 2006 of this court.
Ext.P5 - Photocopy of the judgment dated 19.03.2007 in WPC No 19162 of 2006 of this court.
Ext.P6 - Photocopy of counter affidavit filed on behalf of the first respondent hereinin WPC 19162 of 2006 dated 17.10.2006
Ext.P7 - Photocopy of certificate of experience dated 17.12.2004 issued by the General Manager, Wayanad District Co-op. Bank Ltd
Ext.P8 - Photocopy of the certificate of Experience dated 16.12.2004 issued by the General Manager, Integrated Co-operative Development Project Malappuram
Ext.P9 - Photocopy of certificate of experience dated 16.12.2004 issued by the President, Calicut Co-operative Urban Bank Ltd
Ext.P10 - Extract photocopy of the Service Regulations of the employees of District/Central Co-opderative Bank of Kerala published as per GO)Ms) No 79/86/Co-op dated 30.09.1986 of the Govt of Kerala

-true copy-